



**COLORADO**

**Department of  
Regulatory Agencies**

**2014 Sunset Review:  
Private Occupational Education Act of 1981**

*Office of Policy, Research and Regulatory Reform  
October 15, 2014*



**COLORADO**

**Department of  
Regulatory Agencies**

Executive Director's Office

October 15, 2014

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Private Occupational Education Act of 1981. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2015 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 59 of Title 12, C.R.S. The report also discusses the effectiveness of the Private Occupational School Board and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Barbara J. Kelley  
Executive Director





# COLORADO

## Department of Regulatory Agencies

### 2014 Sunset Review Private Occupational Education Act of 1981

#### SUMMARY

##### *What Is Regulated?*

Private occupational schools are privately owned, for profit, educational organizations. They educate students by presenting instruction in a trade, industry, occupation, or vocation. The Private Occupational School Board (Board) authorizes schools to operate in Colorado and issues permits to agents who recruit students.

##### *Why Is It Regulated?*

Private occupational schools are regulated to provide standards for and to foster and improve private occupational schools and their educational services. Regulation also protects the citizens of this state against fraudulent or substandard private occupational schools.

##### *Who Is Regulated?*

During fiscal year 12-13, the Board regulated 374 approved schools, 403 permitted in-state agents, and 126 permitted out-of-state agents.

##### *How Is It Regulated?*

The Private Occupational Education Act of 1981 (Act) is a set of laws aimed at regulating businesses not traditional academic institutions. Generally, the Board's efforts, among other responsibilities, are directed at ensuring the financial solvency of a facility, confirming physical facilities are adequate, and confirming that the faculty and curriculum are acceptable.

##### *What Does It Cost?*

During fiscal year 12-13, the Division of Private Occupational Schools (DPOS), the administrative arm of the Board, expended \$806,684 and employed seven full-time equivalent employees implementing the Act.

##### *What Disciplinary Activity Is There?*

During the period under review, fiscal years 08-09 through 12-13, there was an average of 78 complaints filed with the Board each year. The majority of the complaints were dismissed because of a lack of jurisdiction or no violation and approximately nine percent of the complaints each year resulted in a disciplinary action taken by the Board.

## KEY RECOMMENDATIONS

### ***Continue the Private Occupational Education Act of 1981 for nine years, until 2024.***

The regulatory issues that most often occur concerning approved facilities involve the Board administering to prepaid student tuition. When a business ceases to operate or when a student leaves a program prior to completion, the Board sometimes intervenes to ensure that any refund or train-out due to the student is carried out according to provisions of the Act.

During fiscal year 12-13, roughly 140,000 students attended one of 370 Board-approved vocational education facilities in Colorado. If the regulation of private occupational schools under the Act was to terminate, chances are good that with no rigorous evaluation and assessment processes in place, consumers would be exposed to more dishonesty in the marketplace.

### ***Expand the Board membership to nine members and include two representatives from Board-approved, non-accredited private occupational schools.***

The majority of students attend larger accredited facilities. However, the majority of Board-approved schools are smaller, non-accredited facilities. Currently, the non-accredited facilities are not represented on the Board. This means the perspectives of the majority of the regulated population are not represented on its regulating authority.

Sunset criterion five asks whether the composition of the board adequately represents the public interest. By having a membership that does not recognize the majority of those regulated, there is a distinct possibility that all essential interests are not represented.

## MAJOR CONTACTS MADE DURING THIS REVIEW

Accrediting Commission of Career Schools and Colleges  
Accrediting Council for Independent Colleges and Schools  
Colorado Association of Career Colleges and Schools  
Distance Education and Training Council  
Colorado Division of Professions and Occupations  
Office of the Colorado Attorney General  
U.S. Department of Education

### **What is a Sunset Review?**

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:  
Colorado Department of Regulatory Agencies  
Office of Policy, Research and Regulatory Reform  
1560 Broadway, Suite 1550, Denver, CO 80202  
[www.dora.state.co.us/opr](http://www.dora.state.co.us/opr)



## Table of Contents

Background .....	1
Introduction.....	1
Types of Regulation.....	2
Licensure .....	2
Certification.....	3
Registration .....	3
Title Protection.....	3
Regulation of Businesses .....	4
Sunset Process.....	4
Methodology .....	5
Profile of the Industry.....	5
Legal Framework.....	7
History of Regulation .....	7
Private Occupational Education Act of 1981 .....	7
Private Occupational School Board and Division.....	7
Facility Surety .....	10
Deceptive Practices.....	12
Program Description and Administration.....	14
School Certification and Agent Permits.....	15
Certificates of Approval .....	15
Agent Permits.....	17
Complaints, Investigations, and Formal Actions.....	18
Analysis and Recommendations.....	22
Recommendation 1 - Continue the Private Occupational Education Act of 1981 for nine years, until 2024. ....	22
Recommendation 2 - Authorize the Board to issue cease and desist orders to facilities that are operating in violation of the Act. ....	23
Recommendation 3 - Repeal the requirement that the Colorado Commission on Higher Education approve Board-approved fee adjustments. ....	24
Recommendation 4 - Repeal the credentialing of barber and cosmetology instructors. ....	24
Recommendation 5 - Expand the Board membership to nine members and include two representatives from Board-approved, non-accredited private occupational schools. ....	25

Recommendation 6 - Replace "Department of Personnel" with "Division of Private Occupational Schools" in sections 119(1), 119(2), 121, and 122 of the Act..... 26

Appendix A - Checklist: Application for Provisional Certificate of Approval..... 27

---

## Background

### Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

---

<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

- 
- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
  - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

## Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

### Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.



---

## Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

## Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

## Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

---

## Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

## **Sunset Process**

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: [www.dora.colorado.gov/opr](http://www.dora.colorado.gov/opr).

The regulatory functions of the Private Occupational School Board and the Division of Private Occupational Schools (Board and DPOS, respectively), in the Department of Higher Education, as enumerated in Article 59 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2015, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the administration of the private occupational school certificate of approval program pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of private occupational schools should be continued for the protection of the public and to evaluate the performance of the Board and DPOS. During this review, the Board must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

---

## Methodology

As part of this review, DORA staff attended Board meetings; interviewed individual Board members, DPOS staff, and private occupational school representatives, administrators, and agents; observed school inspections; reviewed Board records and minutes including complaint and disciplinary actions; interviewed officials with national professional accreditation associations; and reviewed Colorado statutes and Board rules.

## Profile of the Industry

Private occupational education facilities, also known as vocational or trade schools, are designed to educate or train students for a career in a specific craft or profession. The types of schools vary widely and they train individuals for an extremely broad range of occupations. There is a possibility that a school could exist to serve any vocation for which there is a perceived marketplace function. A person may obtain training to be an automobile technician, a hypnotherapist, a butler, a dental assistant, or a veterinary technician, for example.

Many of the schools expose the students to a classroom learning component and/or a practical application component. Many will use the same or similar equipment while training that a student will use on the job. The instructors are often individuals who have extensive practical workforce experience in the areas in which they teach. Typically programs bestow a credential of some kind upon completion of the training.

A tripartite system regulates private occupational schools. There is direction from the federal government, accreditation by nongovernmental organizations, and regulation by state governments. Online education services are regulated by the state in which they have a physical presence.

The amount of oversight to which a school is exposed is, in a general sense, determined by the desire for the school's student population to be eligible for federal financial aid dollars. To be eligible for federal financial aid money, the U.S. Department of Education (DOE) directs that a facility must be accredited by a DOE-approved accrediting organization.

The accrediting organizations are generally nationally- or regionally-based, nongovernmental organizations that approve the subject matter being presented at the facility. Accreditation is a status granted to a facility that meets or exceeds the stated criteria of educational quality demanded by the accrediting organization. Aside from the financial aid piece, the purposes of accreditation are to assess and augment the educational value of a facility, to promote consistency among facilities, and provide measures for accountability.

---

States generally regulate the business aspects of the facility. Facility advertising, its financial solvency, instructor qualifications, and the physical facility are among the concerns attended to by regulators in Colorado. If a facility chooses not to accept federal financial aid money, then it is only subject to business regulation by the state. In those cases the Board is the sole regulating entity responsible for ensuring the quality of each educational operation.

---

## Legal Framework

### History of Regulation

Regulation of private occupational schools began in 1966 with the State Board for Community Colleges and Occupational Education. Subsequently, the General Assembly adopted the Private Occupational Education Act of 1981 (Act) to provide standards, to foster and improve private occupational schools, and to protect consumers against fraudulent or substandard private occupational schools.<sup>2</sup>

The Division of Private Occupational Schools (DPOS) was created inside the Colorado Department of Higher Education (CDHE) in 1990. DPOS was created specifically for the purpose of providing regulatory oversight of this type of educational facility. During 1998, the Private Occupational School Board (Board) was added to the regulatory regime. The Board was empowered with primary regulatory authority and DPOS became its administrative and implementation arm.<sup>3</sup>

Neither DPOS nor the Board has undergone a previous sunset review. However, in 2005, the State Auditor's Office executed a performance audit. The performance audit found several deficiencies that resulted in 19 recommendations to change DPOS and Board systems and regulatory culture.

### Private Occupational Education Act of 1981

A private occupational school is an entity or facility which offers educational credentials or services which are designed to facilitate the vocational, technical, or occupational development of individuals. This may include vocational or technical training given in schools or classes and may include fieldwork or workshops. The intent is to prepare individuals for employment in occupations requiring something other than a four-year baccalaureate degree.<sup>4</sup>

#### Private Occupational School Board and Division

The Act creates the Board as a Type I board empowered to implement the Act.<sup>5</sup> It also creates the DPOS within the CDHE to oversee administrative matters.<sup>6</sup>

---

<sup>2</sup> § 12-59-102(1), C.R.S.

<sup>3</sup> State of Colorado. Report of the State Auditor; Private Occupational Schools Department of Higher Education, Performance Audit 2005. p. 11.

<sup>4</sup> §§ 12-59-103(11), and 103(8.5), C.R.S.

<sup>5</sup> § 12-59-105.1(2), C.R.S.

<sup>6</sup> § 12-59-104.1, C.R.S.

---

As a Type I board, the Board is independent from the DPOS. Colorado Revised Statutes (C.R.S.) defines a Type I board:

[A Type I Board] shall exercise its prescribed statutory powers, duties, and functions, including rule-making, regulation, licensing, and registration, the promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications, independently of the head of the principal department.<sup>7</sup>

Operational functions that are not statutorily vested with the Board, such as recordkeeping, staffing, and others, are assigned to the DPOS.<sup>8</sup>

The Board is made up of seven Governor-appointed, Senate-approved members. Three members must be owners or operators of private occupational schools that receive Title IV funds (Title IV funds refer to federal student aid programs reauthorized under Title IV of the Higher Education Act of 1965). Four members must represent the general public. At least one public member must be employed by a lending institution which is located in Colorado and must be familiar with federal loans and funds authorized in Title IV. At least two public members must be owners or operators of Colorado businesses that employ students who are enrolled in schools subject to the Act.<sup>9</sup> No member can be employed at a junior college, community or technical college, school district, or public agency that receives State vocational funds.<sup>10</sup> The Board must meet a minimum of four times each year for which the members are paid \$35 *per diem*.<sup>11</sup> No member can serve more than two consecutive four-year terms.<sup>12</sup>

Any entity desiring to operate a private occupational school in Colorado must apply for a certificate of approval.<sup>13</sup> A primary charge of the Board is to investigate and evaluate schools that apply for a certificate of approval and either grant or deny the certification.<sup>14</sup> The application must include:<sup>15</sup>

- A catalog published or proposed to be published by the school containing information specified by the Board;
- A description of the school's placement assistance, if any;
- Financial documentation;
- Copies of media advertising and promotional literature;
- Copies of student enrollment agreements or contract forms and instruments evidencing indebtedness;
- A surety bond;

---

<sup>7</sup> § 24-1-105(1), C.R.S.

<sup>8</sup> §§ 24-1-105(1), and 105.1(8), C.R.S.

<sup>9</sup> § 12-59-105.1(3), C.R.S.

<sup>10</sup> § 12-59-105.1(4), C.R.S.

<sup>11</sup> §§ 12-59-105.1(7) and 105.1(6), C.R.S.

<sup>12</sup> § 12-59-105.1(5), C.R.S.

<sup>13</sup> § 12-59-108(1), C.R.S.

<sup>14</sup> §§ 12-59-105.3(1)(d), and 109(1), C.R.S.

<sup>15</sup> § 12-59-108(1), C.R.S.

- 
- A fee; and
  - The name and Colorado address of a designated agent upon whom any process, notice, or demand may be served.

Together with establishing minimum standards for certified private occupational schools, the Board is also tasked with the permitting of agents.<sup>16</sup> An "agent" is a:

...person owning any interest in, employed by, or representing for remuneration or other consideration a private occupational school located within or without this state who enrolls or who, in places other than the principal school premises, offers or attempts to secure the enrollment of any person within this state for education in a school.<sup>17</sup>

It is a violation of the Act to operate a private occupational school or act as an agent without authorization by the Board.<sup>18</sup> The Board is empowered to start a civil action against an entity in violation of this provision. A finding of violation can result in a fine of up to \$100 per violation, per day.<sup>19</sup> Moreover, any person or entity that operates without proper authorization also commits a misdemeanor which may carry a fine of up to \$1,000 and up to six months in jail.<sup>20</sup>

The Board also:<sup>21</sup>

- Consults with the DPOS regarding interstate reciprocity agreements;
- Requires the posting of notices on the school premises notifying students of any school closure;
- Denies or revokes the agent's permit of an out-of-state school determined not in compliance with the Act;
- Appoints administrative law judges to conduct hearings on any matter within its jurisdiction;
- Promulgates rules and adopts procedures necessary to implement the Act and performs duties both enumerated and implied;
- Has the ability to impose and collect fines for violations of the Act;<sup>22</sup> and
- Acts as trustee for all prepaid, unearned tuition and fees in the event that an approved school ceases operation.<sup>23</sup>

Following a written request, approved schools must provide the DPOS with any data the Board deems necessary. All individual data must be kept confidential unless a court order states otherwise or it is provided by law.<sup>24</sup>

---

<sup>16</sup> § 105.3(1)(b), C.R.S.

<sup>17</sup> § 12-59-103(1.5), C.R.S.

<sup>18</sup> §§ 12-59-107(1)(a), and 107(1)(b), C.R.S.

<sup>19</sup> § 12-59-121, C.R.S.

<sup>20</sup> § 12-59-122, C.R.S.

<sup>21</sup> § 12-59-105.3(1), C.R.S.

<sup>22</sup> § 12-59-125(2), C.R.S.

<sup>23</sup> § 12-59-115(7)(e), C.R.S.

<sup>24</sup> § 12-59-105.4, C.R.S.

---

The Act requires that every school adhere to minimum standards. Those standards include that a school has sufficient financial resources, that it maintains a surety bond, that it has a tuition and acceptable fee refund policy, that it has adequate physical and personnel resources, and that its staff has the educational and experience qualifications to ensure that students will receive educational services consistent with the school's stated objectives, among others.<sup>25</sup> The minimum standards represent a foundation for the consumer-based, mission-oriented disposition, i.e., "... to protect the citizens of this state against fraudulent or substandard private occupational schools."<sup>26</sup>

As a condition for certification or for obtaining an agent's permit to represent a school located outside of Colorado, every school must have a policy for refunding prepaid, unearned tuition and fees. The policy must apply in cases when a student fails to enter the course, withdraws, or if the course is discontinued prior to completion.<sup>27</sup> This includes schools that offer individualized instruction.<sup>28</sup> The Board is empowered to require a school to report every tuition refund or contract cancelled.<sup>29</sup> No instrument of indebtedness or payment contract is enforceable if a school does not hold a valid certificate of approval and/or its agent does not hold a valid agent's permit.<sup>30</sup>

### Facility Surety

The statutes in the Act relating to the surety bonds required by each school are extensive. The surety is necessary to indemnify students, or a parent or guardian of a student, who suffers a loss of tuition or fees as a result of a violation or if a facility ceases operation. It is also available for the cost of student "train-out".<sup>31</sup> "Train-out" is the opportunity for a student of a school ceasing operation to receive his or her training at another facility that is approved by the DPOS.<sup>32</sup>

---

<sup>25</sup> § 12-59-106, C.R.S.

<sup>26</sup> § 12-59-102(1), C.R.S.

<sup>27</sup> § 12-59-114(1), C.R.S.

<sup>28</sup> § 12-59-114(2)(b), C.R.S.

<sup>29</sup> § 12-59-114(3), C.R.S.

<sup>30</sup> § 12-59-120(1), C.R.S.

<sup>31</sup> §§ 12-59-115(2), and 115(7)(a), C.R.S.

<sup>32</sup> § 12-59-103(13), C.R.S.



---

To help meet this indemnity goal, the Act stipulates that the amount of the surety must be equal to a reasonable estimate of the maximum unearned, prepaid tuition and fees for a term during the school training year. It must be recalculated annually. No bond can be less than \$5,000.<sup>33</sup> The Board has custodial responsibility of the surety funds when a school ceases operation. If a student declines the offer of a train-out, he or she can file a claim for all unearned, prepaid tuition and fees with the Board.<sup>34</sup> If the bond amount is insufficient to cover all unearned, prepaid tuition and fees, the bond is prorated among the students.<sup>35</sup> The Board also has the ability to allow a surety method other than a bond as long as it indemnifies students for the same purpose as a surety bond.<sup>36</sup>

A student has two years from the time training ends to file a claim that a school violated the minimum standards of the Act and he or she is due reimbursement of tuition and fees.<sup>37</sup>

The Board is instructed to hold a hearing on claims of lost tuition or fees in cases where a school does not cease to operate. If the Board finds in favor of the claimant, it is empowered to make demand on the school or its surety. If the school or surety fails or refuses to pay, the Board is directed to bring action in a court within six years from the date of the original violation.<sup>38</sup> All hearings conducted pursuant to the Act must be conducted according to the State Administrative Procedure Act.<sup>39</sup>

For schools located outside of Colorado, an agent's application must be accompanied by a \$50,000 bond and copies of documents relating to the school's authorization to operate in its home state and any accreditations or other approvals held by the school. The purpose of the school supplying the bond is to indemnify students against deceptive trade or sales practices. In these cases a student has 180 days after the discontinuance of training to file a claim with the Board for loss of fees and tuition.<sup>40</sup>

If a school terminates its operations, the owner is responsible for giving all school records to the DPOS, including all educational and financial records. If it appears that any records may be destroyed, secreted, mislaid, or otherwise made unavailable, the Board may obtain a court order to seize them.<sup>41</sup> The Board is empowered to start a civil action against an entity in violation of this provision. A finding of fault carries a fine of up to \$100 per violation, per day.<sup>42</sup> Additionally, any entity that violates this recordkeeping provision commits a misdemeanor which may carry a fine of up to \$1,000 and up to six months in jail.<sup>43</sup>

---

<sup>33</sup> § 12-59-115(3), C.R.S.

<sup>34</sup> § 12-59-115(7)(b), C.R.S.

<sup>35</sup> § 12-59-115(7)(c), C.R.S.

<sup>36</sup> § 12-59-115(12)(a), C.R.S.

<sup>37</sup> § 12-59-115(6), C.R.S.

<sup>38</sup> § 12-59-115(9), C.R.S.

<sup>39</sup> § 12-59-123, C.R.S. and Board Rule VI.E(1)(a)

<sup>40</sup> § 12-59-115(8), C.R.S.

<sup>41</sup> §§ 12-59-119(1) and 119(2), C.R.S.

<sup>42</sup> § 12-59-121, C.R.S.

<sup>43</sup> § 12-59-122, C.R.S.

---

## Deceptive Practices

A major intent of the Act is protecting consumers from fraud. The Act lists several actions that are considered deceptive trade or sales practices when committed by a school or an agent. The offenses include making any oral or written statement when it reasonably should have known it was false, substantially inaccurate, or misleading;<sup>44</sup> providing prospective students with testimonials, endorsements, or other information about school practices, conditions for employment, or probable earnings which is inclined to mislead or deceive prospective students or the public;<sup>45</sup> and referring to sales representatives as “counselors” or “advisors.”<sup>46</sup> Other violations include a school or agent falsely, directly or by implication:

- Using a “Help Wanted” advertisement or a trade or business name to conceal that it is a school;<sup>47</sup>
- Signifying that completion qualifies the student for admission to a labor union or receipt of a state license;<sup>48</sup>
- Stating that a lack of high school education, prior training, or experience is not a handicap or impediment to completing a program or getting employment in the field;<sup>49</sup>
- Adopting a name, trade name, or trademark which distorts the quality, scope, nature, size, or integrity of the school or its educational services, the approval of a state agency, or an accreditation;<sup>50</sup>
- Indicating that an out-of-state school is approved or accredited by the state;<sup>51</sup> and
- Indicating that successful completion means that transfer credit will be given at any institution of higher education.<sup>52</sup>

Moreover, no school or agent may enroll a student when it is reasonably obvious that the student is unlikely to successfully complete the program or is unlikely to qualify for employment in the field. There is no violation if the concerns are affirmatively disclosed to the student.<sup>53</sup>

---

<sup>44</sup> § 12-59-117(1)(a), C.R.S.

<sup>45</sup> § 12-59-117(1)(h), C.R.S.

<sup>46</sup> § 12-59-117(1)(k), C.R.S.

<sup>47</sup> § 12-59-117(1)(b), C.R.S.

<sup>48</sup> § 12-59-117(1)(c), C.R.S.

<sup>49</sup> § 12-59-117(1)(d), C.R.S.

<sup>50</sup> § 12-59-117(1)(g), C.R.S.

<sup>51</sup> § 12-59-117(1)(j), C.R.S.

<sup>52</sup> § 12-59-117(1)(f), C.R.S.

<sup>53</sup> § 12-59-117(1)(i), C.R.S.

---

If a person claims an economic loss because of a deceptive trade or sales practice, he or she may file a written complaint with the Board. The complaint must lay out the alleged violation and other relevant information. It may be filed any time prior to the commencement of training up to two years following the discontinuance of training.<sup>54</sup> However, if a person does file a complaint with the Board, he or she is obligated to exhaust all remedies provided under the Act prior to filing a claim for a deceptive trade or sales practice in court.<sup>55</sup>

The Board is directed to investigate complaints and, at its discretion, may hold a hearing on the matter. After considering the evidence the Board may issue a cease and desist order for a specified process/practice and it may obtain a court order for enforcement.<sup>56</sup> The Board also has the discretion to make an award for restitution from a loss or start a civil action against the school or agent.<sup>57</sup>

---

<sup>54</sup> § 12-59-118(1), C.R.S.

<sup>55</sup> § 12-59-118(4), C.R.S.

<sup>56</sup> § 12-59-118(2), C.R.S.

<sup>57</sup> § 12-59-118(3), C.R.S.

---

## Program Description and Administration

Regulation provided under the Private Occupational Education Act of 1981 (Act) intends to provide standards and protect consumers against fraudulent or substandard private occupational schools.<sup>58</sup> Generally speaking, the Division of Private Occupational Schools (DPOS) and the Private Occupational School Board (Board), regulate the business of operating a private occupational school. The majority of regulatory effort is directed toward ensuring the financial solvency of a facility, confirming physical facilities are adequate, and confirming faculty and curriculum are acceptable, among other responsibilities. The key to understanding the Act and its implementation is that it is a set of laws aimed at regulating businesses not traditional academic institutions.

The Board is a Type I board consisting of seven, Governor-appointed, Senate-approved members. The Board holds monthly public meetings at the Auraria Higher Education Campus.

Regulation involves approving the individual schools, monitoring schools for continuing compliance with the Act, investigating and acting on complaints, overseeing school closures and student train-out, and making certain school recordkeeping is acceptable. The DPOS staff accomplishes this with a hands-on customer orientation. Each school is assigned to a program specialist (PS) who commonly is the major connection with the DPOS. The PS advises the school throughout the multidimensional approval process and frequently continues as the DPOS contact throughout its tenure as an approved facility. The DPOS's decentralized, individual-oriented administration is geared to customer service and satisfaction as compared to administering the program through a centralized, task-oriented bureaucracy. Because the regulatory process can be complex at times, the DPOS believes assigning an individual PS to advise each facility saves time in the long term and presents a better image of the regulatory process.

Each PS staff member is charged with evaluating:

- Applications for new school licenses and existing school renewals;
- Program and course curriculum;
- Instructor qualifications and agent permits;
- Surety coverage; and
- Marketing and advertising.

Evaluations determine if facilities meet the educational and financial standards necessary to fulfill the contractual obligations made to students.

---

<sup>58</sup> § 12-59-102(1), C.R.S.

---

The DPOS is cash-funded through fees assessed to the schools. Table 1, enumerates the personnel and administrative expenditures made during the period under sunset review.

**Table 1**  
**DPOS Expenditures**  
**Fiscal Years 08-09 through 12-13**

	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Expenditures	\$720,230	\$759,901	\$761,763	\$779,449	\$806,684
FTE	6.0	7.0	7.0	7.0	7.0

The program utilizes 7.0 full-time equivalent (FTE) employees: a program director, compliance director, four PS's, and an administrative FTE. Because the program is cash-funded, the increase in cash expenditures matches the increase in the number of approved schools noted in Table 2. Likewise, the increase in workload precipitated the increase in program FTE.

## **School Certification and Agent Permits**

### Certificates of Approval

As of spring 2014, the DPOS regulated 377 private occupational schools.

Any new school that wishes to operate in Colorado must complete the application process before obtaining a provisional certification. When an individual contacts the DPOS about obtaining a certificate of approval, the DPOS assigns a PS to the applicant and sends an application packet. The PS is initially assigned to help the applicant negotiate the application process. Each application packet has a checklist with several items that must be completed prior to licensing. Among those are:

- Information concerning the surety used to guarantee student tuition;
- Information concerning the physical location of the school;
- Information concerning the business operations of the school;
- Information concerning the school advertising;
- Copies of enrollment agreements; and
- A course catalog.

A copy of the entire application checklist is in Appendix A.

---

The approval process requires a completed application packet, a site visit by the DPOS staff (typically the PS), payment of application fees, and approval by the Board at an open hearing. Accreditation by a private accreditation agency is not necessary for approval.

Each school must have a designated agent who is the school's representative to the DPOS for all legal and administrative matters, a designated on-site resident director, and a designated contact person for instructional staff matters.<sup>59</sup>

Every school needs to ensure and document that its instructional staff is qualified. Each instructor must have the requisite education and/or experience, be of good moral character, and if they instruct students under the age of 16, have undergone a Colorado Bureau of Investigation fingerprint-based background check.<sup>60</sup>

New schools are granted a provisional certificate to operate for up to two years, at the Board's discretion, but one year is typical. After the provisional period, the school may renew. A renewed or "standard" certificate is granted for three years.

Table 2 includes the number of approved schools regulated by the Board for each fiscal year under sunset review.

**Table 2**  
**Approved Private Occupational Schools**  
**Fiscal Years 08-09 through 12-13**

Fiscal Year	Total Schools Approved	Out-of-State Schools	New Schools	Renewals
08-09	326	10	38	106
09-10	337	6	37	74
10-11	338	15	42	109
11-12	360	16	38	107
12-13	374	24	43	84

The column "Out-of-State Schools" represents those schools that are located wholly outside of Colorado but which solicit, recruit, and enroll students within the state of Colorado.

The DPOS is cash-funded. Current fees were established September 14, 2014. The fee for the initial application and certificate of approval is \$1,750 and a certificate for each additional campus is \$1,250. The tri-annual renewal fee is \$1,500.

---

<sup>59</sup> Board Rule III, D.

<sup>60</sup> § 12-59-105.7 C.R.S., Board Rules III, E, 2, b(1), b(2), and b(3), and Board Rule III, E, 2, d.

---

## Agent Permits

Only permitted agents are authorized to sign student enrollment agreements with students in Colorado. There are two categories of permits issued by the DPOS. “In-State Agents” are school representatives who represent the school for the purpose of enrolling and recruiting students for schools that operate in Colorado. “Out-of-State Agents” are representatives for schools that operate in states other than Colorado but recruit students from Colorado.

There are no limits on the number of individual agents that can represent a single school. By the same token, a person may be an agent for multiple facilities simultaneously regardless of the location, but must be permitted for each.

To become a permitted agent, a person must fill out an application and pay a fee. The application consists of nine parts that require information concerning the applicant’s address, employer, employment history, criminal history, and attestations. Among the attestations, the applicant’s employer must certify that a copy of the Act was supplied to the applicant and the applicant must swear that he or she has read the Act.

The fee to become an In-State Agent is \$175 and the fee for an Out-of-State Agent is \$550. According to the DPOS staff, the Out-of-State Agent fee is more because the DPOS must conduct a similar investigation of the out-of-state school as it would of a Colorado-based school seeking a certificate of approval. The reason being, that the Board must do what it can to ensure that educational services marketed in Colorado are legitimate, even though it does not regulate the out-of-state facility itself. The cost of the investigation is assessed in the agent fee. This is because it is the agent that actually does business within Colorado’s borders and not the school. Nonetheless, usually the school pays the fee on behalf of the agents in its employ.

Table 3 includes the number of agents permitted in Colorado during the period covered for this sunset review.

**Table 3**  
**Permitted Agents**  
**Fiscal Years 08-09 through 12-13**

	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
In-State Agent Permits	431	428	585	551	403
Out-of-State Agent Permits	30	34	91	89	126

The number of Out-of-State Agent permits corresponds with a year-to-year increase in the growth of occupational school populations nationwide.<sup>61</sup>

---

<sup>61</sup> CNBC.com. *Vocational Schools Doing The Job For More Students*. Retrieved June 10, 2014 from <http://www.cnbc.com/id/40680866>

---

## Complaints, Investigations, and Formal Actions

Regulatory boards authorized in Colorado law do not typically handle complaints involving financial issues. However, chief among the charges of this Board is sorting through pecuniary issues with reference to tuition, misrepresentation, and a host of other problems. In fact, the majority of the complaints fielded by the staff and reviewed by the Board have a financial component.

Among the initial tasks performed by the staff once a written complaint has been filed is determining if the complaint was filed in a timely manner and if the complainant has standing to make the complaint. To be valid, a written complaint must be filed by a person who is, "A student, enrollee, or parent or guardian of the student or enrollee claiming loss..."<sup>62</sup> To be considered timely, a written complaint must be, "filed within two years after a student discontinues his or her training."<sup>63</sup> Once a complaint is deemed timely and that the complainant has standing, staff ensures it contains other basic factual information. The complaint must identify the loss suffered.

Staff then performs an initial investigation to gather basic information to identify the issues for the Board. The alleged violations generally fall within three categories enumerated in the Act: minimum standards, loss of tuition and fees, and deceptive sales or trade practice. Once received, staff sends the school's director a copy of the complaint requesting a written response within 20 days. A copy of the 20-day letter is also provided to the complainant.

Once a response is received from the school, staff provides the complainant with the reply. The complainant then has 10 days to answer back. This allows the complainant the opportunity to provide additional information that he or she may deem necessary or that the DPOS may request. A copy of the 10-day letter is also provided to the school's director.

Once all the information is gathered on a valid complaint, it is forwarded to the Board for formal action. The Board will hold a hearing and make a determination based on the information provided.

If the violation purported in a complaint is not monetary in nature, i.e., a school is operating without a license or other such violation of the Act, staff performs the investigation and forwards the complaint and information to the Board which may, or may not, pursue the complaint on behalf of the people of Colorado.

---

<sup>62</sup> §12-59-115(6)(a), C.R.S.

<sup>63</sup> §§ 12-59-115(6)(b) and 118(1), C.R.S.



---

Table 4 enumerates the complaints registered with the DPOS pertaining to students, enrollees, or parents or guardians of a student or enrollee during the period under review.

**Table 4**  
**Student Complaints**  
**Fiscal Years 08-09 through 12-13**

<b>Fiscal Year</b>	<b>Complaints Filed</b>
08-09	97
09-10	93
10-11	96
11-12	60
12-13	44

Note that the number of complaints filed dropped roughly 55 percent during the period under review. The DPOS staff explained that there was no systemic reason or change that would cause the number to lessen by more than half, there were just fewer complaints filed.

The majority of complaints made against private occupational schools are dismissed. The chief reason for dismissal is that the complainant does not demonstrate a violation of the minimum standards elucidated in the Act. Examples of complaints that fall outside of the purview of the Act and are dismissed, are complaints concerning federal Title IV financial aid, personality conflicts involving school personnel, or most commonly, when there is a refund dispute that has been settled correctly according to provisions of the Act.

Table 5 enumerates the results of the complaints filed with the DPOS during the period under review.

**Table 5**  
**Complaint Outcomes**  
**Fiscal Years 08-09 through 12-13**

<b>Outcome</b>	<b>FY 08-09</b>	<b>FY 09-10</b>	<b>FY 10-11</b>	<b>FY 11-12</b>	<b>FY 12-13</b>
Dismiss, No Violation	53	40	61	33	22
Dismiss, Resolved through the DPOS	14	7	9	9	4
Dismiss with Cautionary Letter	3	4	6	3	5
No Jurisdiction	14	24	18	14	12
Referred to Board for Review and Action	13	18	4	3	1

The complaints listed in the category, "Dismiss, resolved through the DPOS," are complaints resolved to the mutual satisfaction of the parties. Many refund disputes are resolved in this manner once the DPOS explains and calculates the refund policy contained in the Act. Complaints are listed in the category, "Dismiss with Cautionary Letter," when there is no statutory violation but issues of concern are uncovered during investigation and the DPOS issues a cautionary letter addressing those concerns.

Table 6 lists the actions taken on the cases that are referred to the Board.

**Table 6**  
**Board Actions**  
**Fiscal Years 08-09 through 12-13**

Action	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Notice of Noncompliance	3	5	6	5	5
Revocation/Surrender	1	0	0	2	0
Suspension	0	1	1	0	0
Denial	0	1	1	0	0
Probation Monitoring	1	1	4	1	2
Fines	1	0	1	1	0
Fines Collected	\$500	\$0	\$900	\$1,400	\$0
Stipulations	0	0	2	2	0
Total Board Actions	6	8	15	11	7

"Notice(s) of Noncompliance" represent the largest number of actions taken by the Board. It tells a school to fix an identified problem and it may be coupled with another action.

When the Board is made aware of a school that is operating without a certificate of approval, there are three basic options open to the school:

- Apply and obtain approval to operate;
- Apply and obtain an exemption to operate; or
- Cease operating.

---

Table 7 depicts the number of entities contacted by the DPOS for unauthorized operations and the result of the contact.

**Table 7**  
**Unauthorized Operations**  
**Fiscal Years 08-09 through 12-13**

<b>Fiscal Year</b>	<b>Unauthorized Entities Contacted</b>	<b>Approved to Operate</b>	<b>Exempted</b>	<b>Ceased Operating</b>
08-09	32	8	14	10
09-10	28	7	17	4
10-11	30	7	21	2
11-12	18	4	13	1
12-13	24	6	18	0

The most common statutory exemptions granted are for entities offering avocational educational services. Avocational exemptions go to entities that offer personal interest, hobby or recreation educational services. An example is a cooking class for the nonprofessional cook. Until 2013, an exemption was awarded to non-profit entities operating under the federal non-profit designation based upon federal recognition as 501c3 organization/corporation. Entities previously granted exemption were notified by the DPOS that the exemption no longer exists and to apply for a different exemption, apply for authorization to operate, or cease providing occupational educational services.

The DPOS does not have records of any complaints or actions taken against the permitted agents who recruit students for the schools during the period under review.

---

## Analysis and Recommendations

### **Recommendation 1 – Continue the Private Occupational Education Act of 1981 for nine years, until 2024.**

The Private Occupational School Board (Board) and the Division of Private Occupational Schools (DPOS) are charged with regulating businesses that offer vocational education in Colorado. The Private Occupational Education Act of 1981 (Act) states that the purpose of regulation is, "... to protect the citizens of this state against fraudulent or substandard private occupational schools..."<sup>64</sup>

During fiscal year 12-13 roughly 140,000 students attended one of 374 Board-approved vocational education facilities in Colorado. The Board also registered 530 agents who recruited students.

The sorts of schools operating in Colorado vary widely. There are schools that teach massage, hypnotherapy, automobile mechanics, cosmetology, and cooking among a plethora of other diverse vocations. If there is the possibility of getting a job in a field, there is a possibility that an occupational school will provide training for it.

The Board must approve a school before it is allowed to operate in Colorado and the approval process is quite rigorous. Along with an application, a prospective school must supply information regarding advertising, the physical location of the school, the business operations of the school, a course catalog, a copy of enrollment agreements, and have enough surety in place to cover all the prepaid tuition it may collect. Following a completed application, each facility must undergo a site visit by the DPOS staff.

In addition to the rigorous application process, each school must have at least one Board-registered agent who recruits students and is authorized to sign enrollment agreements with students.

Generally, there are two types of major problems that occur with approved facilities, and both involve refunds of prepaid tuition. The biggest problems take place when a business ceases to operate. When that occurs, the Board oversees either the refunding of each student's prepaid unearned tuition or train-out of the student. Train-out occurs when the Board and student agree on an alternate educational facility to finish the training begun at the original, out-of-business facility. A second often-arising problem involves the dispute of prepaid tuition when a student leaves the program prior to completion. Even though the formula is written into the Act, the Board or the DPOS must sometimes intercede to ensure that the process proceeds acceptably.

---

<sup>64</sup> § 12-59-102(1), C.R.S.

---

Even with the Act in place, consumers are sometimes exposed to dishonest business practices. When that does occur, the Board has the ability to take action and protect consumers.

During 2005, the State Auditor's Office performed an audit of the Board and the DPOS. The audit report contained 19 recommendations to change operations. Application of the recommendations resulted in positive practice and cultural changes of the Board and the DPOS. The implementation of the Act clearly works for the betterment of both the industry and consumers alike.

If the regulation of private occupational schools under the Act was to terminate, chances are good that with no rigorous evaluation and assessment processes in place, consumers would be exposed to more dishonesty in the marketplace. Therefore, to protect public welfare, the General Assembly should continue the Act for nine years, until 2024.

### **Recommendation 2 – Authorize the Board to issue cease and desist orders to facilities that are operating in violation of the Act.**

Private occupational schools operating without proper approval or operating counter to the provisions of the Act can endanger the public. Under the Act, when the Board is made aware of a facility operating without a certificate of approval or violating another section of the Act it has two options: It may issue a fine; or It may seek an injunction through the courts ordering the business to stop the unlawful practice. An important administrative tool assigned to other Colorado regulatory boards is the ability to issue cease and desist orders. The cease and desist order does not exempt the Board from eventually going to court for injunctive relief; it provides an initial step that can streamline processes and create a more efficient regulatory process. Additionally, any administrative action taken, such as a cease and desist order, provides an opportunity for the school to appeal under the State Administrative Procedure Act rather than in a court of law.<sup>65</sup>

There are times when violators are unaware that they are violating the law. The first indication may be when they receive a cease and desist order. The order has the effect of placing an alleged violator on notice that they may be acting unlawfully.

Therefore, the General Assembly should authorize the Board to issue cease and desist orders to facilities that are operating in violation of the Act.

---

<sup>65</sup> § 24-4-101, C.R.S. *et seq.*

---

### **Recommendation 3 – Repeal the requirement that the Colorado Commission on Higher Education approve Board-approved fee adjustments.**

The Act establishes the Board as a Type I board and the DPOS as the administrative arm of the Board. According to the Colorado Revised Statutes, a Type I board exercises powers, duties, and functions, including establishing rates, independent of the head of the principal department.<sup>66</sup> Notwithstanding, the Act mandates that the Colorado Commission on Higher Education (CCHE) approve Board-approved fee adjustments.<sup>67</sup> In essence one regulatory board is directed to approve the actions of another regulatory board. This action implies that the CCHE has dominion over the Board. Nowhere else in the Act is this relationship implied and it runs counter to the directive of a Type I board.

The third statutory criterion that guide sunset reviews directs analysis to examine,

...whether [agency] operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters.

The requirement of the CCHE review adds unnecessary bureaucracy and delay. Eliminating this requirement will allow the Board, a Type I board, to independently determine its budgetary needs and resources.

Therefore, the General Assembly should repeal the requirement that the CCHE approve Board-approved fee adjustments.

### **Recommendation 4 – Repeal the credentialing of barber and cosmetology instructors.**

The Board verifies that instructors have required qualifications, such as occupational experience or a teaching credential, when applicable. However, it does not bestow a teaching license on instructors. There are a vast array of professions and industries taught in approved private occupational schools. The Act singles out barbers and cosmetologists as the only profession to which the Board is directed to award an instructor credential.

---

<sup>66</sup> § 24-1-105(1), C.R.S.

<sup>67</sup> § 12-59-116(3)(b), C.R.S.

---

Typically, a profession's professional licensing board determines what educational prerequisites are necessary to acquire a license in that profession. Based on the licensing needs of the profession, occupational schools establish appropriate curricula. Once a curriculum has been established, a school will find qualified instructors to teach the students. If the school is accredited, its accreditation organization may demand that the instructors have certain qualifications. As a business regulator, the Board verifies that an instructor's file has the necessary experience, education, and any applicable credentials, such as a license, necessary to teach.<sup>68</sup> The Board does not credential or license any other professional instructors.

The credentialing of barber and cosmetology instructors is beyond the expertise of the Board. As a matter of course, all instructors must hold a valid professional license issued by Department of Regulatory Agency's Division of Professions and Occupations and have acquired the experience necessary to qualify as an instructor. Independent of credentialing the instructors, DPOS verifies those qualifications are in the instructor's file at the school site. Therefore, the General Assembly should repeal the credentialing of barber and cosmetology instructors.

**Recommendation 5 – Expand the Board membership to nine members and include two representatives from Board-approved, non-accredited private occupational schools.**

The Act itemizes the Board membership in section 12-59-105.1(3), C.R.S. Because of the way the membership is drawn, it is dominated by large, accredited facilities. The majority of students that attend private occupational schools do attend larger accredited facilities. However, the majority of Board-approved schools are smaller, non-accredited facilities. This means that the perspectives of the majority of the regulated population are not represented on its regulating authority.

The Act allots three of seven seats to members that own or operate private occupational schools that receive Title IV funds. Title IV funds are only available to accredited facilities. The remaining four members come from the general public. At least one of the general public members must be employed by a lending institution located in Colorado and be familiar with Title IV financial aid funding. The remaining two seats are allotted to Colorado employers from industries that employ students who are enrolled in approved private occupational schools. There is no guaranteed representation for the majority of the regulated population who may have different perceptions and insights toward the regulation of the industry.

Sunset criterion five addresses regulatory board composition. It asks whether the composition of the board adequately represents the public interest. By having a membership that does not recognize the majority of those regulated, there is a distinct possibility that all essential interests are not represented.

---

<sup>68</sup> Board Rule III.E.2. b.

---

Therefore, the General Assembly should expand the Board membership to nine members and include two representatives from Board-approved, non-accredited private occupational schools.

**Recommendation 6 – Replace “Department of Personnel” with “Division of Private Occupational Schools” in sections 119(1), 119(2), 121, and 122 of the Act.**

The Act assigns the preservation of records in the event that a facility ceases operation to the Department of Personnel. The Department of Personnel has no direct connection to the regulation of private occupational schools. It does, however, operate the State Archives. The State Archivist has prepared general retention and disposition schedules that give state agencies the legal authorization to retain and dispose of common kinds of records created by state government. The schedules list the permanently valuable records that should be retained and properly protected.<sup>69</sup>

Notwithstanding, the Board has the responsibility to keep track of legible true copies of all educational, financial, or other records of a school that ceases operation. The Board is responsible for arranging for any appropriate train-out or refund due to students of a failed school. As such, it needs to be the custodian of the applicable records, subject to the directives of the State Archivist.

Therefore, the General Assembly should replace “Department of Personnel” with “Division of Private Occupational Schools,” the administrative arm of the Board, in sections 119(1), 119(2), 121, and 122 of the Act. Vesting such responsibility in the DPOS will not interfere or conflict with the functions and directives of the State Archivist.

---

<sup>69</sup> Colorado State Archives. *State Agency Records Management*. Retrieved September 9, 2014, from <https://www.colorado.gov/pacific/archives/state-agency-records-management>



# Appendix A - Checklist: Application for Provisional Certificate of Approval

PAF/1a Rev12.10.11

## CHECKLIST: APPLICATION FOR PROVISIONAL [New School] CERTIFICATE OF APPROVAL [COA]

Name of School \_\_\_\_\_

School Contact Person \_\_\_\_\_ Date \_\_\_\_\_

- \_\_\_ I. Colorado Private Occupational School Application to Operate [notarized] C.R.S. 12-59-108(1)
- \_\_\_ A. The required fee C.R.S. 12-59-108(g)
1. \$1,500
2. \$1,000 (Additional campus)
- \_\_\_ B. A proposal outlining the method of determining the amount of the surety bond as required by C.R.S. 12-59-115(3). C.R.S. 12-59-109(1)
- \_\_\_ C. A surety bond or bonding instrument as required by C.R.S. 12-59-115, properly executed in the amount set forth in the proposal C.R.S. 12-59-106(1)(b), C.R.S. 12-59-108(f)
- \_\_\_ D. A current balance sheet **including pro forma** for new school, a current income statement [school itself and parent firm], using a format which reflects accepted accounting principles/procedures. It is to be prepared by a public accountant or certified public accountant **that is independent from the school.**
- \_\_\_ E. **Current** Safety Inspection, showing NO violations. [e.g., local fire department report, Certificate of Occupancy, Proof of Insurance.]
- \_\_\_ F. A copy of any franchise agreement, if applicable
- \_\_\_ G. A list of other locations where training is offered, if applicable
- \_\_\_ H. The name and Colorado **physical** address [not P.O. Box]] other than the school address, of the required **designated** agent upon whom **legal process may be served**
- \_\_\_ I. Copies of current advertisements and other promotional materials
- \_\_\_ J. A description of the school's placement assistance, if applicable
- \_\_\_ K. A copy of the school's catalog
- \_\_\_ L. Copies of the school's enrollment agreement [and credit instruments, if applicable]
- \_\_\_ M. Facilities Lease with landlord/tenant signatures\_\_\_\_, beginning date\_\_\_\_, and ending date\_\_\_\_.
- \_\_\_ N. Information regarding type of business, **check one:**
- \_\_\_ If a *sole proprietorship*, include the name\_\_\_\_, home address\_\_\_\_, phone number\_\_\_\_, and title of position\_\_\_\_.
- \_\_\_ If a *partnership*, include a list with the name\_\_\_\_, home address\_\_\_\_, phone number\_\_\_\_, and title of position of each partner/owner\_\_\_\_. Indicate which, if any, maintains controlling interest in the school\_\_\_\_.
- \_\_\_ If a *corporation or Limited Liability Company*, include a list with the name\_\_\_\_, home address\_\_\_\_, phone number\_\_\_\_, and title of each corporate officer/member\_\_\_\_. In addition, attach a list showing the same information on any stockholder(s) having a controlling interest in the school. **Include a copy of:**
- \_\_\_ Articles Of Incorporation, and
- \_\_\_ Current Certificate of Good Standing

### New schools with Out-of-State corporations, include:

- \_\_\_ Certificate of Authority to transact business in the State of Colorado

- \_\_\_ II. In-State Agent Permit Application(s) [notarized] \_\_\_ w/ required agent fee (\$150 per agent) \_\_\_
- \_\_\_ III. A. Current faculty list on file\_\_\_
- B. All instructor approvals properly documented showing required educational & occupational experience\_\_\_
- C. Has a background check been completed for any instructors that teach minors (under 16)?\_\_\_
- \_\_\_ IV. Proposed Program and/or Stand Alone Courses submitted for approval
- \_\_\_ Evaluator Reports (if applicable)
- \_\_\_ V. Supervisory Onsite Visit completed by DPOS: \_\_\_\_\_
- Date

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DPOS Program Specialist: \_\_\_\_\_